UNITED NATIONS

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Economic and Social Council

Distr.
GENERAL

E/CN.4/1996/NGO/71
28 March 1996

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-second session
Item 12 of the provisional agenda

IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Written statement submitted by Human Rights Watch, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[22 March 1996]

1. Under the Commission's agenda item dealing with the issues of racial discrimination, Human Rights Watch would like to call the members' attention to racial discrimination problems in the United States.

Race discrimination in the United States criminal justice system

2. The over-representation of African American males in the criminal justice system has been well documented. A national survey in 1995 by the Sentencing Project, a private research group, found that almost one in three (32.2 per cent) young African American males (aged 20-29) is under criminal justice supervision on any given day - in prison or jail, or on probation or parole. 1/ The Sentencing Project's 1990 study found one in four young African Americans under criminal justice supervision, revealing a trend toward increased incarceration or supervision during the five-year period between reports. 2/

3. The growing proportion of African Americans and Americans of Hispanic heritage within the criminal justice system is the direct result of the enforcement of certain drug laws, disproportionate targeting members of these groups by law enforcement agencies, and inequitable sentencing in the nation's courts. For example, a 1991 investigation of 700,000 criminal cases in the State of California found that "whites as a group get significantly better deals than Hispanics or blacks who are accused of similar crimes and who have similar backgrounds". 3/ After analysing its database in criminal cases, the United States Sentencing Commission, a federal agency, concluded in 1991 that "the difference (in length of sentences) found across race seems to have increased since 1984". 4/

Race and the application of the death penalty

4. The role that race continues to play in the administration of the death penalty in the United States has long been a matter of concern to United States domestic organizations and international human rights groups. Statistical evidence consistently demonstrates that the race of the victim continues to be a decisive factor in determining whether a death sentence will be issued, and an increasing body of evidence indicates that black defendants in some jurisdictions are considerably more likely than white defendants to receive death sentences for comparable crimes.

5. Racial inequality in the enforcement of United States drug laws has also resulted in what appears to be a disproportionate use of the federal death penalty mandated for drug "kingpins" in cases involving minorities. According to a March 1994 study conducted by a United States congressional committee, "Racial minorities are being prosecuted under federal death penalty law far beyond their proportion in the general population or the population of criminal offenders. Analysis of prosecutions from 1988-1994 under the federal death penalty provisions of the Anti-Drug Abuse Act of 1988 reveals that 89 per cent of the defendants selected for capital prosecutions have been either African-American or Mexican-American. Moreover, the number of prosecutions under this Act has been increasing over the past two years with no decline in the racial disparities. All 10 of the recently approved capital prosecutions have been against black defendants." 5/

Race and police misconduct

6. Police misconduct and abuse, especially in communities of predominantly African American or Hispanic populations, is one of the most pressing civil liberties issues in the United States. Through targeted enforcement, which includes sweeps through minority areas, the targeting of black males for humiliating searches or "stops and frisks", and the creation of criminal profiles that invariably focus on African Americans and Hispanics, police officials appear to have allowed their bias to dictate law enforcement strategy in some cases. Too often, police officers make remarks that reveal such racial bias.

7. Historically, the federal Government has paid scant attention to the problem of police abuse. Legislation dating from the Reconstruction era (the period immediately after the United States civil war) authorizes federal prosecution of law enforcement officials who "wilfully" deprive people of

their constitutional rights. Federal law (18 United States Code Sections 241 and 242) permits federal prosecution of civil rights violations committed "under colour of law", which include police brutality. Under that authority, the Justice Department brings a small number of civil rights prosecutions each year, but these cases appear to be only a small proportion of the many incidents of violations of civil rights each year. According to Justice Department data, of some 11,000 complaints reviewed under these statutes in 1994, a scant 65 cases were filed for prosecution - half of 1 per cent. 6/

Race and the prosecution of drug offences

8. Although United States criminal drug laws are neutral on the face of it, they have had a remarkably discriminatory impact. Drug offence sentences are the single most important cause in the steadily increasing percentage of prison and jail populations that are African American and the decreasing percentage of whites in the prison population. Non-white Americans are arrested, prosecuted, convicted and imprisoned for drug crimes far out of proportion to their numbers among the general population or within the population of drug users. For example, although African Americans make up only 13 per cent of United States drug users, they represent 35 per cent of narcotics arrests, 55 per cent of convictions, and 74 per cent of those receiving prison sentences. 7/

9. The impact on the African American community of drug arrests and prosecutions is magnified by the fact that blacks are disproportionately charged with offences which Congress has singled out for especially severe punishment - the sale and use of crack cocaine. In establishing penalties for drug offences, Congress has singled out possession and distribution of crack cocaine for much harsher punishment than any other form of cocaine - or any other controlled substance. It takes 100 times more powder cocaine than crack cocaine to trigger the same mandatory minimum penalty. In addition, simple possession by a first-time offender of crack cocaine triggers a minimum sentence of five years, whereas simple possession of powder cocaine or any other controlled substance is only a misdemeanour, punishable by a maximum of one year in prison.

10. According to the United States Sentencing Commission, in 1993, 88.3 per cent of crack trafficking defendants in federal courts were black and 4.1 per cent were white. Eighty-five per cent of defendants convicted of simple possession of crack were black; 10.3 per cent were white. 8/ These figures are particularly disturbing in light of the annual surveys conducted by the National Institute for Drug Abuse (NIDA), which consistently indicate that more than half of all crack cocaine users are white. The most recent findings on drug use indicate that in 1994, 62 per cent of current cocaine users were white, 22 per cent were black and 16 per cent were Hispanic. 9/ In addition to the discriminatory impact of the 100 to 1 ratio in mandatory minimum sentencing laws and the over-targeting of drug enforcement efforts against communities of predominantly African American or Hispanic populations, prosecutorial discretion appears to cause further discrimination.

Race and super-maximum security housing in prison

11. Both State and federal detention facilities in the United States are increasing the use of segregated housing for administrative and disciplinary purposes. Certain segregated housing units subject prisoners to extreme sensory deprivation, including near-total isolation from other prisoners, minimal (or no) time outdoors, deprivation of reading materials and recreational facilities, little ventilation, and continuous lighting all night long. Known as "maxi-maxis" in prison jargon, these super-maximum security units are used variously throughout the United States for administrative and disciplinary infractions. Maxi-maxis have been the subject of numerous lawsuits, some of which have resulted in findings of cruel and inhuman treatment of those so detained. 10/

12. Although Human Rights Watch has not conducted a statistical analysis of the racial breakdown of assignment to super-maximum security housing, the discretionary nature of the process for assigning prisoners to super-maximum security housing and anecdotal evidence based on examination of several State prison facilities suggest that at least in some institutions, prisoners of African American or Hispanic origin are particularly vulnerable to receiving this treatment at the caprice of prison authorities. A survey of prisoners, prison guards and prisoners' visitors and families in 41 States, conducted by Dr. Mark Hamm of the Indiana State University's Department of Criminology, revealed that "the most frequently disciplined groups of prisoners are jailhouse lawyers, Black prisoners, and prisoners with mental handicaps. There is no significant variation by State or region". 11/

13. In New Jersey, for example, prisoners' use of Afrocentric symbols, Swahili words, and red and green maps of Africa are all considered "paramilitary" by prison officials and thus deemed particularly dangerous. The New Jersey State Prison Management Control Unit (MCU) holds 75 inmates who are considered a "threat to institutional security". The MCU is reserved for those who *might* pose a threat and those identified for this amorphous category are overwhelmingly (95 per cent) African American in a prison where the overall African American population is 64 per cent. None has been accused of taking part in any violent act nor of breaking a prison rule.

Notes

1/ Marc Mauer and Tracy Huling, "Young Black Americans and the Criminal Justice System: Five Years Later", The Sentencing Project, Washington, D.C., 1995.

2/ Marc Mauer, "Young Black Men and the Criminal Justice System: A Growing National Problem", The Sentencing Project, Washington, D.C., 1990.

3/ Christopher Schmitt, "Plea Bargaining Favors Whites, as Blacks, Hispanics Pay Price", *San Jose Mercury News*, 8 December 1991.

4/ "United States Sentencing Commission Report on Mandatory Minimum Sentencing and Race", United States Sentencing Commission, Washington, D.C., 1991.

5/ "Racial Disparities in Federal Death Penalty Prosecutions, 1988-1994", Staff Report by the House Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, Washington, D.C., March 1994.

6/ 1995 Department of Justice Congressional Authorization and Budget Submission, Volume I, Civil Rights Division.

7/ Mauer and Huling, p. 12.

8/ United States Sentencing Commission, "Special Report to the Congress: Cocaine and Federal Sentencing Policy" Washington, D.C., February 1995.

9/ Substance Abuse and Mental Health Services Administration, United States Department of Health and Human Services, "Preliminary Estimates from the 1994 National Household Survey on Drug Abuse", Washington, D.C., September 1995, p. 20.

10/ See, for example, Madrid v. Gomez, No. C90-3094-THE (Northern District of California, 1995).

11/ Mark Hamm, Therese Coupez, Francis Hoze, and Corey Weinstein, "The Myth of Humane Imprisonment: A Critical Analysis of Severe Discipline in Maximum Security Prisons", *Prison Violence in America* (Cincinnati, Ohio: Anderson Publishing Company, 1994), pp. 167-200.